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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,639	11/10/2003	Guy Jancik	1320-PA01	4774
27189	7590	06/29/2005	EXAMINER	
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP			DOAN, ROBYN KIEU	
530 B STREET				
SUITE 2100			ART UNIT	PAPER NUMBER
SAN DIEGO, CA 92101			3732	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/705,639	JANCIK, GUY
	Examiner Robyn Doan	Art Unit 3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 November 2003.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/06/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input checked="" type="checkbox"/> Other: <u>Attachment A</u> .         |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-7, 9-11, 15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over La Joie et al (5287863) in view of Letherby et al (5899210 IDS cited reference).

With regard to 1, 5-7 and 9-11, 15, La Joie et al discloses a nail buffering device (figs. 1-2) comprising a foam body (10) having three sides (22, 24 and see attachment A), each side of the foam body having a length and width, an intermediate foam layer (14, 20) on each of the two sides (22, 26), at least one abrasive layer (col. 3, line 65) on of said sides and wherein the foam body being pliable (fig. 2) to bend around a nail being filed or polished. La Joie et al also discloses an internal support member (12) positioning longitudinally within the foam body to stiffen the foam body. La Joie et al does not disclose the nail buffering device having a triangular cross-section with an intermediate foam layer attached to each of the three sides, at least one buffering layer and at least one polishing layer on each of said intermediate foam layers and the length of the body being approximately equal to the circumference of the device. Letherby et al

discloses a nail tool with multiple surfaces (fig. 1) comprising a triangular cross-section body with an intermediate foam layer (32) on each side of the body; Letherby et al also discloses an abrasive surface (34) attaching to one of the intermediate layers and a buffing surface attaching to one of the intermediate layers (col. 2, lines 62-64 and col. 3, lines 22-23). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the shape and the intermediate foam layers as taught by Letherby et al into the nail buffering device of La Joie et al for the purpose of providing resilience which is desirable in filling the contoured of the nails. It would also have been obvious to one having an ordinary skill in the art to apply a polishing layer on one of the intermediate foam layer of Letherby et al since such modification is well known in the art and it would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the length of the body being approximately equal to the circumference of the device, since such a modification would have involved a mere change in the size of the component. In regard to claims 18-20, La Joie et al in view of Letherby et al are capable to perform the claimed method steps.

Claims 2-4, 8, 12-14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over La Joie et al in view of Letherby et al.

With regard to claims 2-4, 8, 12-14 and 16-17, Lajoie et al in view of Letherby et al disclose a nail tool comprising all the claimed limitations in claims 1 and 10 as discussed above except for the length of the body being between 2.5 inches to 4.5 inches and the width being between .75 inches to 2 inches. It would have been obvious

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to one having an ordinary skill in the art at the time the invention was made to construct the length of the body being between 2.5 inches to 4.5 inches and the width being between .75 inches to 2 inches, since such a modification would have involved a mere change in the size of the component.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stephens, Calafut and Pangburn are cited to show the state of the art with respect to a nail tool having foam material.

The drawings filed 11/10/2003 have bee approved by the Examiner.

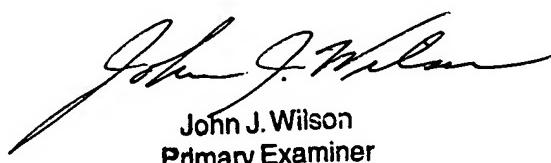
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
June 22, 2005



John J. Wilson  
Primary Examiner

Attachment A

